

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

RICKY PORTIS

PETITIONER

v.

CIVIL ACTION NO. 2:20-cv-40-TBM-JCG

WARDEN JESSIE WILLIAMS

RESPONDENT

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND GRANTING RESPONDENT’S MOTION TO DISMISS**

This matter is before the Court on submission of the Report and Recommendation [14] entered by United States Magistrate Judge John C. Gargiulo on December 7, 2020. The Respondent filed a Motion to Dismiss [8] alleging that the Petition [1] for Writ of Habeas Corpus is barred by the one-year statute of limitations in 28 U.S.C. § 2244(d). The Petitioner filed his Response [11] to Respondent’s Motion to Dismiss arguing that he is entitled to equitable tolling and, therefore, the one-year statute of limitations did not begin to run until January 20, 2020.

After considering the submissions of the parties, the record, and relevant legal authority, Judge Gargiulo concluded that the Petition [1] is barred by the one-year statute of limitations set forth in 28 U.S.C. § 2244(d). Judge Gargiulo recommends that Respondent’s Motion to Dismiss [8] be granted and that the Petition [1] for Writ of Habeas Corpus under 28 U.S.C. § 2254 be denied. The Petitioner has not filed an objection to the Report and Recommendation, and the time for filing an objection has expired.

“When a party fails timely to file written objections to the magistrate judge’s proposed findings, conclusions, and recommendation, that party is barred from attacking on appeal the unobjected-to proposed findings and conclusions which the district court accepted, except for plain error.” *Casas v. Aduddell*, 404 F. App’x 879, 881 (5th Cir. 2010); *Thomas v. Arn*, 474 U.S. 140, 152,

106 S. Ct. 466, 88 L. Ed. 2d 435 (1985) (“There is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review a magistrate’s report to which no objections are filed.”). Having considered Judge Gargiulo’s Report and Recommendation, the Court finds that it is neither clearly erroneous nor contrary to law.

IT IS THEREFORE ORDERED AND ADJUDGED that the Report and Recommendation [14] entered by United States Magistrate Judge John C. Gargiulo on December 7, 2020 is ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED AND ADJUDGED that the Respondent’s Motion to Dismiss [8] is GRANTED and that the Petition [1] for Writ of Habeas Corpus under 28 U.S.C. § 2254 is DISMISSED WITH PREJUDICE.

THIS, the 22nd day of March, 2021.


TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE